

**CITY OF SAN JOSE AND ALP
CITY PROPOSED TENTATIVE AGREEMENT 2**

TENTATIVE AGREEMENT 2

THIS PROPOSED TENTATIVE AGREEMENT 2 IS SUBMITTED IN AN ATTEMPT TO REACH A SETTLEMENT ONLY ON THOSE LISTED TERMS STARTING ON PAGE 2, AND DOES NOT COVER ANY OF THE TERMS THAT ARE NOTED AS CURRENTLY UNDER NEGOTIATION. IN ADDITION, THIS PROPOSED TENTATIVE AGREEMENT 2 IS INTENDED TO BE IN ADDITION TO THE TERMS CONTAINED IN TENTATIVE AGREEMENT 1.

IF THE ASSOCIATION AND THE CITY REACH AN AGREEMENT ON ANY OTHER TERM NOT COVERED BY THIS PROPOSED TENTATIVE AGREEMENT 2, SUCH TERM OR TERMS SHALL BE MEMORIALIZED IN A SEPARATE TENTATIVE AGREEMENT(S).

THIS PROPOSED TENTATIVE AGREEMENT 2 IS A PACKAGE ON THOSE TERMS FOR A MEMORANDUM OF AGREEMENT. IN THE EVENT EITHER PARTY REJECTS AN OVERALL TENTATIVE AGREEMENT, EACH PARTY RESERVES THE RIGHT TO MODIFY, AMEND AND/OR ADD PROPOSALS.

THIS PROPOSED TENTATIVE AGREEMENT 2 IS CONSIDERED TENTATIVE AND SHALL NOT BE CONSIDERED FINAL OR BINDING UNTIL A FINAL AGREEMENT ON ALL TERMS HAS BEEN REACHED AND BOTH RATIFIED BY ASSOCIATION MEMBERS AND APPROVED BY CITY COUNCIL.

FOR THE CITY:

FOR ALP:

Marco Mercado Date
Senior Executive Analyst

Vera Todorov Date
President
Association of Legal Professionals (ALP)

This Tentative Agreement 2 covers only those terms listed below. Any terms that are noted as currently under negotiation are not included as part of this Tentative Agreement 2. This Tentative Agreement 2 is in addition to the terms contained in Tentative Agreement 1.

1. AGREEMENT CONDITIONS

- Please see attached.

2. MANAGEMENT RIGHTS

- Please see attached.

3. ASSOCIATION RIGHTS

- Please see attached.

4. WAGES

- Please see attached.

5. RETIREMENT

- Please see attached.

7. RETIREE HEALTHCARE FUNDING AND BENEFITS

- Please see attached.

8. HEALTH INSURANCE

- Please see attached.

9. DENTAL INSURANCE

- Please see attached.

10. FLEXIBLE SPENDING ACCOUNTS

- Please see attached.

11. SICK LEAVE

- Please see attached.

12. MANAGEMENT PERFORMANCE PROGRAM

- Please see attached.

13. TELECOMMUTING

- Please see attached.

1. AGREEMENT CONDITIONS**1.1 Full Understanding, Modification and Waiver**

1.1.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

1.1.2 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

1.1.3 Healthcare Cost Mitigation. Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retiree healthcare benefits and funding upon request of either party. This may include but is not limited to alternatives to reduce the cost of retiree healthcare benefits and options for current employees that comply with IRS regulations.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.¹

1.1.4 Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any other administrative process or any applicable State or Federal law or regulation diminish the benefits contained in Measure B, or impose additional obligations on the City.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party that any action referenced in the previous paragraph has occurred. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

1.2 Separability. Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be

¹ As proposed to ALP by the City on [December 18, 2012](#).

declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

1.3 Concerted Activity It is understood and agreed that:

1.3.1 Participation by any employee represented by the Union in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.

1.3.2 If the Union, its officers or its authorized representatives violate provision 1.3.1 above or tolerate the violation of provision 1.3.1 above and after notice to responsible officers or business representatives of the Union, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 1.3.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Union shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Union and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Union, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit.

1.4 Non-Discrimination

1.4.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, pregnancy, actual or perceived gender identity and political affiliation. The parties further agree that this section shall not be subject to the Grievance Procedure provided in this Agreement.

1.4.2 The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union. The parties further agree that this section may be subject to the Grievance Procedure provided in the Agreement.

2. MANAGEMENT RIGHTS

- 2.1** Except to the extent that the rights are specifically limited by the provisions of this Agreement or by any applicable law, the City retains all rights, powers and authority granted to it pursuant to any law or the City Charter, including, but not limited to, the right: (a) to direct the work force, (b) to increase, decrease or re-assign the work force, (c) to hire, promote, demote, discharge or discipline for cause, (d) to transfer or reclassify employees, (e) to provide merit increases, (f) to assign employees special work requirements, and (g) to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit. The City's failure to exercise a management right does not preclude the City from exercising it at some time in the future.
- 2.2** Except to the extent that the rights are specifically limited by the provisions of this Agreement or by any applicable law, the City has the sole and absolute right to determine the nature and type of, assign, re-assign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employees affected or the Association representing such employee.
- 2.3** For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Agreement, the City's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative, except where a particular City representative is otherwise designated.

3. ASSOCIATION RIGHTS

- 3.1** Principle Authorized Agent: The Association's elected President, or his/her duly authorized representative, is the Association's principal authorized agent.
- 3.2** Authorized Representatives: The City shall recognize up to three (3) Association representatives who are properly designated by the Association. The Association agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as representatives.
- 3.3** Release Time: The City recognizes that members of the bargaining unit represented by the Association are paid on a salary basis and have ethical responsibilities with regard to the completion of their workload. Due to the nature of this employment, the parties agree that release time is generally not necessary as Association officials already have the flexibility to manage their time within the limits set forth in this agreement and the City's rules.

In the event the Association believes that release time is necessary for some specific purpose, it shall request release time from the City Attorney, including (1) the reason release time is needed, (2) the individual(s) for whom release time is sought, and (3) the amount of time requested. The City Attorney may allow reasonable requests for release time unless the City Attorney believes that the request would negatively impact the ability of the City Attorney's office to perform its work in a timely and effective manner.

4. WAGES

- 4.1** Subject to subsection 1.1.4 entitled “Measure B,” salary ranges for classifications represented by the Association as of the effective date of this Agreement and set forth in Exhibit A shall remain in effect during the term of this Agreement.

5. RETIREMENT

- 5.1** Employees represented by the Association are covered by the Federated City Employees' Retirement System. Retirement benefits shall be provided in accordance with the provisions of the plan, City Charter and/or Municipal Code.

7. RETIREE HEALTHCARE FUNDING AND BENEFITS²

- 7.1** The City and employees represented by the Association began to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the “policy method”) to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan (“Plan”). The transition began on June 28, 2009. The Plan’s initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan’s actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this section.
- 7.2** The City and the Association agree that the Municipal Code and/or applicable plan documents shall be amended to the extent necessary in accordance with this agreement and that the Association will support such amendments.
- 7.3** The phase-in to the ARC shall be effective on the first pay period of the City’s fiscal year in each succeeding year, the first increment which was effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of the ARC may vary upward or downward. The City and the Association agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members’ contribution rate is 4% of pensionable pay, the subsequent fiscal year’s contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay
- 7.4** If, at any time the calculated Plan member cash retiree healthcare contributions exceed 10% of pensionable pay or the calculated City cash retiree healthcare contributions exceed 10% of pensionable pay for the City (excluding implicit subsidy), the parties shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for Plan members and/or the City in order to fund the full ARC. Such discussions shall include alternatives to reduce retiree healthcare costs. If the parties are unable to agree on the manner in which to fully fund the retiree healthcare ARC (contributions exceeding 10% of pensionable pay for Plan members and/or the City, excluding implicit subsidy), applicable impasse dispute resolution procedures shall apply.

² As proposed to ALP by the City on [December 18, 2012](#).

- 7.5** The City has established a qualified 115 trust (“Trust”). Employee contributions will begin going into the Trust in time to avoid any potential of reaching IRS limits on the existing medical benefits account or whenever the City receives advice of Tax Counsel or ruling from the IRS that the contributions can be treated as pre-tax, whichever occurs first.
- 7.6** It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.
- 7.8** Employees hired into full-time benefited positions on or after the first pay period following the effective date of the ordinance implementing this provision (“Effective Date”) will not participate in or be eligible for the defined benefit retiree healthcare program. Employees hired on or after the Effective Date will receive up to a 1% match into a defined contribution plan that is established by the City in accordance with IRS regulations, as long as the total City contribution in addition to the retirement benefit contribution does not exceed 9%. If the City’s contribution reaches 9%, the amount contributed by the City into a defined contribution plan will automatically be reduced. Employees will be eligible for a maximum of a 1% City contribution only if the Employee contributes at least 1% of their salary into the defined contribution program.

8. HEALTH INSURANCE

8.1 The City will provide health coverage for eligible employees and their dependents in accordance with one of the available plans.

8.2 During the term of this Agreement, the City will continue to make available at least one of each type of the health coverage plans set forth in Subsections 8.2.1 through 8.2.3.

The City may offer any other additional health coverage plans at its discretion, including but not limited to the 1500 deductible plan.

8.2.1 Non-Deductible HMO. A non-deductible health maintenance organization (“Non-Deductible HMO”), that include the following co-pays:

- (a) Office visit co-pay of \$25,
- (b) Prescription co-pay of \$10 for generic and \$25 for brand name,
- (c) Emergency room co-pay of \$100, and
- (d) Inpatient/outpatient procedure co-pay of \$100.

8.2.2 Non-Deductible POS. A non-deductible point of service plan.

8.2.3 Non-Deductible PPO. A non-deductible preferred provider organization.

8.2.4 In the event that the City is unable to make one of the foregoing types of plans available, the parties will meet and confer over a replacement plan.

8.3 Premium: Effective December 23, 2012, for full time employees, the City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan.³ If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City’s contribution toward the lowest priced Non-Deductible HMO plan.

8.4 Dual Coverage: An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

8.5 Effective January 1, 2014, all available plans will have a 4-tier rate structure (Employee, Employee plus spouse, Employee plus Child(ren) and Family). The premiums will be adjusted effective the first pay period in payroll calendar year 2014, which starts December 22, 2013.⁴

³ The City’s contribution is prorated as follows for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

⁴ As proposed to ALP by the City on [December 18, 2012](#).

9. DENTAL INSURANCE

- 9.1** The City will provide dental insurance for eligible employees and their dependents in accordance with one of the two available plans, one of which is an indemnity plan and the other of which is a dental health maintenance organization plan. Both of these plans are described in detail in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department.
- 9.2** For full-time employees, the City will pay 100% of the lowest priced plan for the employee or the employee and dependent coverage.⁵ For any other plan, the City will pay 95% for the employee or the employee and dependent coverage.
- 9.3** An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

⁵ The City's contribution is prorated as follows for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

10. FLEXIBLE SPENDING ACCOUNTS

The City shall offer Association members the option of participating in either of the following flexible spending accounts as in effect on the Effective Date: (1) Dependent Care Assistance and (2) Medical Reimbursement Programs.

11. SICK LEAVE

Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

- 11.1** Accrual: Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, or other paid leave shall be considered as time worked for purposes of this section.
- 11.2** Accrued sick leave may be utilized if the employee is required to be absent from work for the following reasons:
- 11.2.1 The employee is absent from work on account of non-job related illness or injury, including absences of female employees related to pregnancy or childbirth.
 - 11.2.2 The employee is absent from work on account of routine medical or dental appointments of the employee or any of the following persons who need assistance: a child/stepchild for which the employee is legally responsible, or the employee's mother/stepmother, father/stepfather, spouse or Domestic Partner.
 - 11.2.3 The employee is absent from work for the care related to the illness or injury of a child/stepchild for which the employee is legally responsible, mother/stepmother, father/stepfather, spouse or Domestic Partner.
 - 11.2.4 Up to forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, or mother-in-law.
- 11.3** Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 11.4** Accrued sick leave also may be used in accordance with the Catastrophic Illness Time Donation Program as set forth in Section 4.2.10 of the City Policy Manual in effect as of the Effective Date of this agreement.
- 11.5** Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, or use of narcotics not prescribed by a licensed physician.
- 11.6** If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

- 11.7** No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf notifies his or her immediate superior or the City Attorney, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Attorney may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.
- 11.8** An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
- 11.9** Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact regularly assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Section 11.
- 11.11** No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact the employee is not regularly assigned to work or would not have been required to work on that day, inclusive of any hours an employee elects to work in addition to their indefinite assignment, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Section 11.

12. MANAGEMENT PERFORMANCE PROGRAM

Performance reviews and merit increases, including bonuses (if applicable), shall be provided at the sole discretion of the City Attorney and shall occur consistent with the City's Management Performance Program, as set forth in Section 3.3.2 of the City Policy Manual as of the Effective Date of this agreement.

13. TELECOMMUTING

The City Attorney may allow telecommuting to the extent such telecommuting is consistent with the City's Telecommuting Policy, as set forth in Section 1.7.2 of the City Policy Manual as of the Effective Date of this agreement.